

In the Matter of CENTRAL MISSOURI TELEPHONE COMPANY and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION B-1107, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Case No. C-1294.—Decided October 2, 1939

Communications Industry—Settlement: stipulation providing for compliance with the Act including recognition of union—*Order:* entered on stipulation and record—*Complaint:* dismissed, with prejudice, as to one person, without prejudice, as to two persons.

Mr. Paul F. Nachtman, for the Board.

Mr. Charles K. Hackler, of Warrensburg, Mo., for the respondent.

Mr. Langdon West, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by International Brotherhood of Electrical Workers, Local Union B-1107, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Acting Regional Director for the Seventeenth Region (Kansas City, Missouri), issued its complaint dated March 14, 1939, against Central Missouri Telephone Company, Warrensburg, Missouri, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint, accompanied by notice of hearing, was duly served upon the respondent and the Union.

Concerning the unfair labor practices the complaint alleged in substance that the employees in the respondent's plant department, excepting supervisory officials, constitute a unit appropriate for collective bargaining purposes, and although at all times since September 24, 1937, a majority of such employees have designated the Union as their collective bargaining representative, the respondent, on

November 12, 1937, and at various times thereafter, refused to bargain collectively with the Union as the exclusive representative of the respondent's employees within the appropriate unit; that the respondent on or about December 27, 1937, terminated and has since refused to reinstate four named employees¹ because they joined and assisted the Union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection; and that the respondent, by the aforesaid acts and refusals to act, and by inciting fear of discharge among employees affiliated with or seeking affiliation with the Union, by spying upon employees to obtain information concerning their union affiliation and activities, and by other specified acts and conduct, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On March 18, 1939, the Acting Regional Director granted the respondent additional time in which to file its answer. On March 24, 1939, the respondent filed an answer admitting certain specific allegations, including the allegations with respect to the appropriate unit, but denying the jurisdiction of the Board and the averments of unfair labor practices.

Pursuant to notice, a hearing was held at Warrensburg, Missouri, from March 27 to March 31, 1939, before Joseph L. Maguire, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the proceeding. The Union did not participate. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

At the opening of the hearing on March 27, the complaint was amended without objection to aver specifically that the alleged refusal to bargain also constituted an unfair labor practice within the meaning of Section 8 (1) of the Act. At the same time, the answer was amended to correct typographical errors therein and to deny the further averment of the complaint. Pursuant to leave granted by the Trial Examiner, the respondent, on or about April 4, 1939, filed in writing a motion to dismiss the proceedings. The Trial Examiner in his Intermediate Report issued on May 27, 1937, denied the motion. In his Intermediate Report, copies of which were served upon the respondent and the Union on May 31, 1939, the Trial Examiner found that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist from such practices, that upon request it bargain collectively with the Union as the exclusive representative of

¹ Robert Adams, Max H. Atkinson, Orville E. Selix, and Charles C. Winchester.

the respondent's employees in the unit found by him to be appropriate, and post notices stating that it would cease and desist and would bargain as aforesaid, and file a report setting forth compliance made with his recommendations. The Trial Examiner found that Charles C. Winchester had been discriminatorily discharged but made no recommendation concerning him as Winchester had testified he was receiving a higher wage elsewhere and did not wish reinstatement at his former wage. The Trial Examiner further found that the respondent had not discriminated against Robert Adams, and recommended that the complaint be dismissed as to him. He further recommended that the complaint be dismissed without prejudice as to Max H. Atkinson and Orville E. Selix, alleged to have been discriminated against by the respondent and who were not available at the hearing.

On June 10, 1939, the respondent filed with the Regional Director a report stating that it had posted notices in compliance with the Trial Examiner's Intermediate Report. On or about June 12, 1939, the respondent, the Union, and the Acting Regional Director entered into a stipulation in settlement of the case, subject to approval by the Board. On July 17, 1939, the respondent, the Union, and the Regional Attorney for the Seventeenth Region entered into a further stipulation, amending the first stipulation. The stipulation, as amended, provides as follows:

It is hereby stipulated and agreed by and between Central Missouri Telephone Company, hereinafter referred to as respondent, International Brotherhood of Electrical Workers, Local Union B-1107, affiliated with the American Federation of Labor, hereinafter referred to as the Union, and Paul F. Broderick, Acting Regional Director, National Labor Relations Board, Seventeenth Region, as follows:

I

1. Upon charges duly filed by the Union, the National Labor Relations Board, through Paul F. Broderick, Acting Regional Director, Seventeenth Region of the National Labor Relations Board, agent of the National Labor Relations Board acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, and acting pursuant to its Rules and Regulations—Series 1, as amended—Article IV, Section 1, issued its complaint and notice of hearing on the 14th day of March, 1939, against Central Missouri Telephone Company, respondent herein. The complaint and notice of hearing was duly served upon all parties hereto on the 14th day of March, 1939. A hearing in said matter before Joseph L. Maguire, duly authorized to act as Trial Examiner, was held in Warrensburg,

Missouri, commencing on the 27th day of March and ending on the 31st day of March, 1939. The Intermediate Report of the Trial Examiner in said matter was issued on the 27th day of May, 1939, and duly served upon the parties thereto on the 31st day of May, 1939.

2. It is hereby stipulated and agreed, subject to the approval of the National Labor Relations Board, that:

(a) Respondent expressly waives its right to make exceptions to the Intermediate Report of the Trial Examiner in this matter;

(b) Respondent expressly waives the making of findings of fact or conclusions of law by the National Labor Relations Board;

(c) Respondent expressly consents to the issuance by the National Labor Relations Board of a decision and order based upon this stipulation and the pleadings herein, including the amended charge and the Intermediate Report and upon the entire record in this matter.

II

It is stipulated and agreed that:

1. Respondent is a Missouri public utility corporation, whose local office is in Warrensburg, Missouri; its general offices are located at Newton, Iowa. With the exception of directors' qualifying shares, all of the stock of the company is owned by Investors Telephone Company of Chicago, Illinois, which is a Delaware corporation. The Investors Telephone Company is the sole owner of Arkansas Associated Telephone Company, Central Carolina Telephone Company, Coastal Telephone Company, Iowa State Telephone Company, Platte Valley Telephone Corporation, and The Sussex Telephone Company, all of which also have their general offices at Newton, Iowa, where the policies of the respondent corporation are determined. The general purchasing department is maintained there for all said corporations where purchases of general materials and supplies are arranged. The labor policy of respondent is formulated at Newton. The directors and officials of Investors Telephone Company are identical with those of respondent, except that George A. Hearne, who is general manager of respondent stationed at Warrensburg, Missouri, is a director and vice president of the respondent but does not hold office in the parent corporation.

2. The respondent is engaged in the business of using and licensing others to use electric speaking telephones and other apparatuses and appliances for the transmission of intelligence by electricity, and for such purposes constructing, owning, main-

taining, and operating public and private lines, central offices, and district exchanges.

The respondent owns and operates 27 exchanges in the State of Missouri, approximately three-fourths of which are connected with one another by a network of wires and toll lines operated by the respondent. Twenty-four of these exchanges are located in a section in Missouri in territories contiguous one with the other; three are located in a section of Missouri about 500 miles removed from the general area serviced by the other 24.

The respondent is required, pursuant to Missouri statutes, to and does maintain contractual relationship with Southwestern Bell Telephone Company to effect the transmission of intelligence by telephone which originates from respondent's exchanges destined for delivery in Missouri at points not located on respondent's lines and at points without the State of Missouri. Through the respondent's facilities the transmission of intelligence is effected which originates elsewhere than on its own lines in Missouri and outside the State of Missouri.

Messages destined for interstate and foreign delivery originating on the lines of the respondent are routed over toll lines owned and operated by Southwestern Bell Telephone Company and thence by the latter over the lines of the Bell System and affiliates and/or other telephone companies.

During the years 1936, 1937, and 1938, respondent purchased equipment and materials valued at \$25,193.66, \$32,689.83, and \$26,766.35, respectively, substantially all of which was shipped from points outside Missouri. During the same years the respondent's gross operating revenue amounted to \$162,832.19, \$175,172.59, and \$179,160.79, respectively. The number of interstate messages a month amounts to 7.6 per cent of the total messages completed, and the revenue therefor amounts to 13.3 per cent of the total revenue received.

III

It is stipulated and agreed that:

1. International Brotherhood of Electrical Workers, Local Union B-1107, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

IV

It is further stipulated and agreed by and between the respective parties hereto that the National Labor Relations Board may forthwith enter an order in the above-entitled case to the following effect:

Respondent, Central Missouri Telephone Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from the date hereof:

(a) From interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Local Union B-1107, International Brotherhood of Electrical Workers, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

(b) From (1) discouraging membership in Local Union B-1107, International Brotherhood of Electrical Workers, or any other labor organization, by discrimination in regard to hire or tenure of employment or condition of employment; and (2) refusing to bargain collectively with Local Union B-1107, International Brotherhood of Electrical Workers, the representative of the plant department employees.

2. In order to effectuate the policies of the Act, take the following affirmative action:

(a) Upon request, bargain collectively with Local Union B-1107, International Brotherhood of Electrical Workers, as the exclusive representative of the respondent's plant department employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its building at Warrensburg, Missouri, and at all of its exchanges, except those located in Steele, Palmer, and Bernie, Missouri, and maintain for a period of at least sixty (60) consecutive days, notices to its employees, stating (1) that respondent will cease and desist in the manner aforesaid; (2) that respondent will, upon request, bargain with Local Union B-1107, International Brotherhood of Electrical Workers, as exclusive representative of respondent's plant department employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) File with the Acting Regional Director for the Seventeenth Region within a period of ten (10) days after the entry of the order what steps have been taken to comply with the said order.

V

All stipulations herein made and the terms and provisions thereof are made subject to the approval of the National Labor Relations Board.

On July 27, 1939, the Board issued its order approving the stipulation, as amended, and making it part of the record in the case.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a Missouri public-utility corporation with a local office at Warrensburg, Missouri, and its general offices in Newton, Iowa. With the exception of the directors' qualifying shares, all of the stock of the respondent is owned by Investors Telephone Company of Chicago, Illinois, a Delaware corporation, which is the sole owner of several telephone companies having their general offices at Newton, Iowa. The respondent is engaged in the business of using and licensing others to use telephones and other apparatuses and appliances for the transmission of intelligence by electricity, and for such purposes constructing, owning, maintaining, and operating public and private telephone lines, central offices, and district exchanges.

The respondent owns and operates 27 exchanges in the State of Missouri, approximately three-fourths of which are connected with one another by a network of wires and toll lines operated by the respondent. Twenty-four of these exchanges are located in sections of Missouri contiguous with one another; three are located in a section of Missouri about 500 miles removed from the general area serviced by the other 24.

Pursuant to statutes of the State of Missouri, the respondent maintains contractual relationship with Southwestern Bell Telephone Company to effect the transmission of intelligence by telephone which originates from the respondent's exchanges and which is destined for delivery at points in Missouri not located on the respondent's lines and at points outside the State of Missouri. Messages destined for interstate and foreign delivery originating on the lines of the respondent are routed over toll lines owned and operated by Southwestern Bell Telephone Company and thence over the lines of the Bell System and affiliates and/or other telephone companies. Through the respondent's facilities the transmission of intelligence is effected which originates elsewhere than on its lines and outside the State of Missouri.

During the years 1936, 1937, and 1938, the respondent purchased equipment and materials valued at \$25,193.66, \$32,689.83, and \$26,766.35, respectively, substantially all of which were shipped from points outside the State of Missouri. During the same years the respondent's gross operating revenue amounted to \$162,832.19, \$175,172.59, and \$179,160.79, respectively. The number of interstate messages a month amount to 7.6 per cent of the total messages com-

pleted, and the revenue therefor amounts to 13.3 per cent of the total revenue received.

We find that the respondent is engaged in traffic, communication, and commerce among the several States and with foreign countries.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, Local Union B-1107, affiliated with the American Federation of Labor, is a labor organization within the meaning of the Act.

III. THE APPROPRIATE UNIT

The Union and the respondent agreed, and we find that all the respondent's plant department employees except supervisory officials and those plant employees working at the exchanges located at Steele, Palmer, and Bernie, Missouri, constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to the employees full benefit of their right to self-organization and collective bargaining and otherwise effectuates the policies of the Act.

ORDER

Upon the basis of the above findings of fact and stipulation, as amended, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Central Missouri Telephone Company, Warrensburg, Missouri, its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Local Union B-1107, International Brotherhood of Electrical Workers, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection;

(b) From discouraging membership in Local Union B-1107, International Brotherhood of Electrical Workers, or any other labor organization, by discrimination in regard to hire or tenure of employment or condition of employment;

(c) From refusing to bargain collectively with Local Union B-1107, International Brotherhood of Electrical Workers, the representative of the plant department employees.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local Union B-1107, International Brotherhood of Electrical Workers, as the exclusive representative of the respondent's plant department employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its building at Warrensburg, Missouri, and at all of its exchanges, except those located in Steele, Palmer, and Bernie, Missouri, and maintain for a period of at least sixty (60) consecutive days, notices to its employees, stating (1) that respondent will cease and desist in the manner aforesaid; (2) that respondent will, upon request, bargain with Local Union B-1107, International Brotherhood of Electrical Workers, as exclusive representative of respondent's plant department employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) File with the Acting Regional Director for the Seventeenth Region within a period of ten (10) days after the entry of this order a report in writing of what steps have been taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint, as amended, in so far as it alleges that the respondent has engaged in unfair labor practices with respect to Robert Adams, be, and it hereby is, dismissed.

AND IT IS FURTHER ORDERED that the complaint, as amended, in so far as it alleges that the respondent has engaged in unfair labor practices with respect to Max H. Atkinson and Orville E. Selix, be, and it hereby is, dismissed without prejudice.